



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2013-0732]

RIN 1625-AA08

Special Local Regulation for Marine Event Hampton Bay Days Festival, Hampton River; Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement period of a special local regulation for one specific recurring marine event in the Fifth Coast Guard District. This regulation applies only to the Hampton Bay Days Festival, which consists of a Fireworks Display held at multiple locations along the Hampton River, Hampton, Virginia. This special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on portions of the Hampton River near Hampton, Virginia during the event.

DATES: This rule will be effective on September 7, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0732]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757) 668-5581, e-mail Hector.L.Cintron@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

This marine event is regulated at 33 CFR 100.501, Table to § 100.501, section (c) line 9. This rule involves an annually occurring marine event that is scheduled to take place on the 2nd or 3rd Friday, Saturday, and Sunday. Hampton Bay Days has changed the date of the event to take place on Saturday September 7, 2013, which is the first Saturday in September not the second.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because the ambiguity of the current regulation does not cover the time frame specified for the event was not discovered until July 30, 2013. Because this was approximately 38 days before the event, it is impracticable to provide a full comment period due to lack of time.

Delaying this regulation's effective date for comment would be contrary to the public interest as immediate action is needed to ensure the safety of the event participants, spectator craft, and other vessels transiting the event area. The Coast Guard will provide advance notifications to users of the affected waterways of the safety zone via marine information broadcasts and local notice to mariners.

B. Basis and Purpose

Hampton Bay Days is sponsoring the three days Hampton Bay Days Festival, which includes a fireworks display over the waters of the Hampton River, near Hampton, Virginia on the Saturday of the festival.

The regulation listing annual marine events within the Fifth Coast Guard District and safety zones locations is 33 CFR 100.501. The Table to § 100.501 identifies special local regulations by COTP zone, with the COTP Hampton Roads zone listed in section "(c)" of the Table. The Table to § 100.501, at section (c) event Number "9" describes the enforcement date and regulated location for this marine event.

The fireworks display will occur this year on Saturday September 7, 2013 from 9:20 p.m. until 10 p.m. The fireworks will be launched from three different locations,

one at 37°01'33" N, 076°20'11" W, one at 37°01'37" N, 076°20'11" W, and the last one at 37°01'35" N, 076°20'01" W, all of which are along the Settlers Landing Road Bridge and the nearby adjacent land.

C. Discussion of the Rule

The Coast Guard will temporarily suspend the regulation listed at section (c.) line No. 9 in the Table to §100.501 and insert this temporary regulation at the Table to §100.501 line No. 12 in order to reflect the correct date for this year's event. This change is needed to accommodate the change in date of the Hampton Bay Days Festival. No other portion of the Table to §100.501 or other provisions in §100.501 shall be affected by this regulation.

This special local regulation will restrict vessel movement in the waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from latitude 37°01'03" N, longitude 076°20'26" W, to latitude 37°01'01.5" N, longitude 076°20'32" W. The safety zone is needed to control vessel traffic and enhance the safety of spectators during the fireworks display. The regulation will be enforced from 9:20 p.m. to 10 p.m. on September 7, 2013. Except for persons or vessels authorized by the Coast

Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period.

In addition to notice in the Federal Register, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those orders. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) the safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may

transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in that portion of the Hampton River from 9:20 p.m. until 10 p.m. on September 7, 2013.

This regulated area will not have a significant economic impact on a substantial number of small entities

for the following reasons: (i) it will only be in effect for a limited duration, and (ii) before the enforcement period of September 7, 2013, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not

retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically

significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast

Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This rule is categorically from further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and
recordkeeping requirements, Waterways

For the reasons discussed in the preamble, the Coast
Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to
read as follows:

Authority: 33 U.S.C. 1233.

2. At § 100.501, in the Table to § 100.501, make
the following amendments:

a. Under "(c.) Coast Guard Sector Hampton Roads -
COTP Zone," suspend entry 9.

b. Under "(c.) Coast Guard Sector Hampton Roads-
COTP Zone," add entry 12, which will be
enforced from 9:20 p.m. to 10 p.m. on
September 7, 2013 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the
Fifth Coast Guard District.

Table to § 100.501

No.	Date	Event	Sponsor	Location
*	*	*	*	*
(c.) Coast Guard Sector Hampton Roads - COTP Zone				
12.	September 7, 2013	Hampton Bay Days Festival.	Hampton Bay Days.	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01'03.0" N, longitude 076°20'26.0" W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01'01.5" N, longitude 076°20'32.0" W.

August 16, 2013

John K. Little
 Captain, U.S. Coast Guard
 Captain of the Port Hampton Roads

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